

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

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MICHAEL DAVID SCOTT,

Plaintiff,

v.

THE BANK OF NY MELLON TRUST  
COMPANY, N.A. AS SUCCESSOR-IN-  
INTEREST TO ALL PERMITTED  
SUCCESSORS AND ASSIGNS OF JP  
MORGAN CHASE BANK, AS TRUSTEE,  
FOR CERTIFICATE HOLDERS OF  
NOMURA ASSET ACCEPTANCE  
CORPORATION, MORTGAGE PASS-  
THROUGH CERTIFICATES, SERIES 2005-  
AR2

Defendants.

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Civil Action No. 1:24-cv-11614-AK

**DEFENDANT’S MOTION TO DISMISS  
THE COMPLAINT PURSUANT TO FED. R. CIV. P. 12(b)(6)**

Pursuant to Fed. R. Civ. P. 12(b)(6), Defendant The Bank of New York Mellon Trust Company, N.A. as Successor-in-Interest To All Permitted Successors and Assigns of JP Morgan Chase Bank, as Trustee, For Certificate Holders of Nomura Asset Acceptance Corporation, Mortgage Pass-Through Certificates, Series 2005-AR2 (“Defendant”) moves this Court to dismiss, with prejudice, the Complaint filed by Plaintiff Michael David Scott (“Plaintiff”) for failure to state a claim upon which relief may be granted. In support of this motion, Defendant relies upon its accompanying memorandum of law and the exhibits thereto.

WHEREFORE, Defendant prays that the Court grant this motion to dismiss, dismiss the Complaint with prejudice and without leave to amend, enter judgment in favor of Defendant, and grant such other and further relief that it deems appropriate.

**Rule 7.1 Certification**

Undersigned counsel hereby certifies that he conferred with the Plaintiff by telephone on July 15, 2024 regarding this motion including a good faith attempt to narrow the issues raised in it. Some of those discussions are referenced in the supporting memorandum of law.

Respectfully submitted,

The Bank of New York Mellon Trust  
Company, N.A., as Successor-in-Interest to  
All Permitted Successors and Assigns of  
JPMorgan Chase Bank, N.A., as Trustee, for  
Certificate Holders of Nomura Asset  
Acceptance Corporation, Mortgage Pass-  
Through Certificates Series 2003-AC5,

By its counsel,

/s/ David E. Fialkow  
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Dated: July 17, 2024

**CERTIFICATE OF SERVICE**

I, David E. Fialkow certify that the foregoing filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on this 17th day of July 2024.

/s/ David E. Fialkow

David E. Fialkow